IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3433 OF 2006

Ramchandra Ananda Raul .. Petitioner
Versus
The sub-Divisional Officer, Radhanagari Division, Kolhapur and Ors. .. Respondents

Mr.P.S.Dani for petitioner
Mr.S.M.Kamble for respondent Nos. 2 to 4.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th November 2007

P.C.

. The challenge is to the order of the first ad-hoc Dist.Judge Kolhapur delivered on 30th May 2005 in Land Reference case No.31 of 1999. The petitioner before me was opponent No.4 before the Dist.Judge Kolhapur. Reference case arose out of section 30 of the Land Acquisition Act inasmuch as the sub-divisional Officer referred to the Reference court the issue as to

whether compensation amount must be apportioned between opponent Nos. 1 to 3 before the Reference Court or as between all parties including the petitioner - opponent No.4.

2. Upon materials produced before the reference court by all parties and adverting to the same, the Dist. Court held that Opponent No.4 cannot be held to be entitled to claim compensation. The Dist.Judge rested this conclusion on the basis of the 7/12 extract which prima facie evidenced possession of the persons whose names are mentioned therein. Equally, it took note of the fact that Special Civil Suit No.291 of 1999 filed by the petitioner and others for declaration, possession and alternatively for partition is pending. It has noted in paras 14 and 15 the case of the petitioner of oral partition between the predecessor in title. It has adverted to the plaint averments but has rightly concluded that the materials then

available before it do not show that total amount of compensation will have to be apportioned between all the opponents before it. The conclusion is based on evidence at that stage which pointed to the opponent Nos. 1 to 3 being entitled to the claim of compensation.

3. Reading this order as a whole I see no justification for the apprehension expressed by Mr.Dani that the petitioner would be left without any amount coming to his share. It is his apprehension that considering the observations in the reference case, even the pendency of the partition suit would not assist him. I see no basis for this apprehension because the materials that have been referred to by the reference court are relied upon to prove prima facie case of possession by the opponent Nos. 1 to 3. At that stage whatever evidence was produced enabled the reference court to apportion the compensation between opponent Nos. 1 to 3 before it. Insofar

as petitioner is concerned, the reference court has clearly observed that the partition suit being pending and the opponents being parties to the same, if the petitioner establishes his claim, then, even if the compensation is apportioned between the opponents Nos. 1 to 3 that does not prevent the civil court from granting appropriate reliefs or for the petitioner claiming them in accordance with law.

4. In my view, if the order of the reference court is read in this manner, then, there is no warrant for interfering with the same in exercise of extra ordinary and equitable jurisdiction under Article 227 of the Constitution of India. Petition, therefore, is dismissed with above clarification. No costs.

(S.C.Dharmadhikari, J)